

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
OF THE STATE OF MONTANA

In the matter of the amendment of ARM )	NOTICE OF PUBLIC HEARING ON
17.38.101, 17.38.201A, 17.38.202, )	PROPOSED AMENDMENT AND
17.38.203, 17.38.204, 17.38.208, )	ADOPTION
17.38.209, 17.38.216, 17.38.225, )	
17.38.234, and 17.38.239, pertaining to )	(PUBLIC WATER SUPPLY)
incorporation by reference of current )	
federal regulations and other materials in )	
the public water supply rules, and the )	
adoption of New Rule I pertaining to )	
consecutive system coverage )	

TO: All Concerned Persons

1. On September 17, 2008, at 1:30 p.m., the Board of Environmental Review will hold a public hearing in Room 35, Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact Elois Johnson no later than 5:00 p.m., September 2, 2008, to advise us of the nature of the accommodation that you need. Please contact Elois Johnson, Paralegal, at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail ejohnson@mt.gov.

3. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

17.38.101 PLANS FOR PUBLIC WATER SUPPLY OR WASTEWATER SYSTEM (1) and (2) remain the same.

(3) As used in this rule, the following definitions apply in addition to those in 75-6-102, MCA:

(a) "Accessory building" means a subordinate building or structure on the same lot as the main building, which is under the same ownership as the main building, and which is devoted exclusively to an accessory use such as a garage, workshop, art studio, guest house, or church rectory.

(a) remains the same, but is renumbered (b).

~~(b)~~ (c) "Main" means any line providing water or sewer to multiple service connections, any line serving a water hydrant that is designed for fire fighting purposes, and any line that is designed to water or sewer main specifications;

(c) remains the same, but is renumbered (d).

~~(d)~~ (e) "Service connection" means a line that provides water or sewer service to one building or living unit a single building or main building with accessory

buildings, and that is designed to service line specifications;

- (e) through (j)(ii) remain the same, but are renumbered (f) through (k)(ii).
- (4) through (17) remain the same.

AUTH: 75-6-103, MCA

IMP: 75-6-103, 75-6-112, 75-6-121, MCA

REASON: The proposed amendments to ARM 17.38.101(3)(a) and (e) clarify the "service connection" definition and add a new definition for "accessory building."

The department allows certain accessory buildings to be placed on a service line without the need to upgrade the line to meet the more extensive design requirements for mains. The current definition could be read as precluding use of accessory buildings. The proposed amendments are necessary to clarify which additional buildings may be connected to a service line.

The proposed amendment to ARM 17.38.101(3)(c) clarifies the "main" definition. This amendment is necessary to close a loophole that existed between the Unified Plumbing Code and Department Circular DEQ-1. Any line serving a water hydrant designed for fire fighting must be designed and constructed to the water main specifications. The amendment also provides that any line designed to main specifications constitutes a main. This is necessary to ensure that lines that exceed specifications for service lines (e.g., diameter) comply with all the requirements applicable to mains, even if the line does not serve multiple service connections.

17.38.201A INCORPORATION BY REFERENCE--PUBLICATION DATES AND AVAILABILITY OF REFERENCED DOCUMENTS (1) Unless expressly provided otherwise, in this subchapter where the board has:

- (a) adopted and incorporated by reference a federal regulation, the reference is to the July 1, ~~2003~~ 2007, edition of the Code of Federal Regulations (CFR);

- ~~(b) referred to a section of the Montana Code Annotated (MCA), the reference is to the 2003 edition of the MCA.~~

- ~~(c) adopted a federal regulation and incorporated it by reference into this subchapter as modified by this subchapter, a reference to the federal regulation is to the regulation as modified by this subchapter.~~

- (2) through (4) remain the same.

AUTH: 75-6-103, MCA

IMP: 75-6-103, MCA

REASON: The proposed amendment to ARM 17.38.201A(1)(a) incorporates by reference the most recent applicable sections of the Code of Federal Regulations (CFR). The amendment will update the incorporation from the 2003 CFR to the 2007 CFR. These proposed amendments are necessary to allow the department to retain primacy for enforcement of safe drinking water laws. The policy of the Montana Legislature has been for state agencies to retain primacy over environmental and public health programs. The substantive changes to the CFR that occurred between 2003 and 2007 are summarized below in the Reason for the

proposed amendments to ARM 17.38.239.

The proposed deletion of ARM 17.38.201A(1)(b) removes an unnecessary reference to the Montana Code Annotated, 2003 edition. As the statutes are self-implementing, the adoption of a specific edition is erroneous.

ARM 17.38.201A(1)(c) is proposed for deletion because it is unnecessary.

17.38.202 DEFINITIONS In this subchapter, the following terms have the meanings indicated below and must be used in conjunction with and supplemental to those definitions contained in 75-6-102, MCA. In addition, the board hereby adopts and incorporates by reference the definitions in 40 CFR 141.2, except for the following terms: "person," "public water supply system (PWS)," "ground water under the direct influence of surface water (GWUDISW)," "special irrigation district," and "state." The terms "person," "public water supply system," "ground water under the direct influence of surface water," and "state," as used in the portions of 40 CFR Parts 141 and 142 adopted by reference in this subchapter, have the meanings defined below.

(1) and (2) remain the same.

(3) "Ground water under the direct influence of surface water (GWUDISW)" has the same meaning as adopted and incorporated by reference from 40 CFR 141.2, except that GWUDISW determinations for regulatory compliance purposes are made in accordance with the Department of Environmental Quality Circular PWS-5, Ground Water Under the Direct Influence of Surface Water, ~~2002 edition~~, as adopted and incorporated by reference in ARM 17.38.209.

(4) through (6) remain the same.

AUTH: 75-6-103, MCA

IMP: 75-6-103, MCA

REASON: The proposed amendment to ARM 17.38.202(3) is necessary to remove repetitive language. The edition of the applicable Circular is identified in ARM 17.38.209 where the board adopts Department Circular PWS-5 by reference.

17.38.203 MAXIMUM INORGANIC CHEMICAL CONTAMINANT LEVELS

(1) The board adopts and incorporates by reference:

(a) through (c) remain the same.

(d) ~~40 CFR 141.80(c)(1) and 40 CFR 141.80(c)(2)~~, as modified by 72 Fed. Reg. 57,782 (Oct. 10, 2007), which sets forth the action levels for lead and copper.

AUTH: 75-6-103, MCA

IMP: 75-6-103, MCA

REASON: The proposed amendments to ARM 17.38.203(1)(d) adopt new federal requirements for lead and copper that are in effect but are not codified in the 2007 Code of Federal Regulations. The statements of reasonable necessity for substantive new or modified federal requirements are consolidated at the end of this notice in the Reason section for ARM 17.38.239.

17.38.204 MAXIMUM ORGANIC CHEMICAL CONTAMINANT LEVELS

(1) The board hereby adopts and incorporates by reference 40 CFR 141.12, 141.61(a), 141.61(c), 141.64(a)(1), and 141.64(b)(1)(i), and 141.64(b)(2)(i), which set forth maximum contaminant levels for synthetic organic contaminants, volatile organic contaminants, and disinfection byproducts.

AUTH: 75-6-103, MCA

IMP: 75-6-103, MCA

REASON: The proposed amendments to ARM 17.38.204 correct a typographical error and remove a reference to section 141.12, which has been deleted in the federal rule and replaced by 141.64. The change in the federal requirements codifies the old requirements in the new section. Because of renumbering of the federal rules, section 141.64(a) and (b) now address both contaminant levels and treatment requirements. Because ARM 17.38.204 addresses only contaminant levels, the references to section 141.64 in this rule are proposed to be amended to refer only to the federal provisions relating to contaminant levels. The provisions in section 141.64 relating to treatment requirements will be incorporated by the proposed amendments to ARM 17.38.208(4)(e). The statements of reasonable necessity for substantive new or modified federal requirements are consolidated at the end of this notice in the Reason for ARM 17.38.239.

17.38.208 TREATMENT REQUIREMENTS

(1) The board hereby adopts and incorporates by reference 40 CFR 141.70, which sets forth general surface water treatment requirements, with the following changes:

(a) through (c) remain the same.

(2) The board hereby adopts and incorporates by reference 40 CFR 141.71, which sets forth requirements for avoiding filtration, except for the following changes:

(a) through (e) remain the same.

(3) The board hereby adopts and incorporates by reference 40 CFR 141.72, which sets forth treatment requirements for public water suppliers that use filtered surface water, except that the terms "undetectable" and "not detected" in 40 CFR 141.72(a)(4)(i) and 141.72(b)(3)(i) are replaced by the phrase "less than 0.2 mg/l by the DPD method or 0.1 mg/l by the amperometric titration method."

(4) The board adopts and incorporates by reference the following:

(a) through (d) remain the same.

(e) 40 CFR 141.64(c)(a)(2), 141.64(b)(1)(ii), 141.64(b)(2)(ii), and 141.64(b)(2)(iii), which sets forth BATs for disinfection byproducts;

(f) and (g) remain the same.

(h) 40 CFR 141.81, as modified by 72 Fed. Reg. 57,782 (Oct. 10, 2007), which sets forth the applicability of lead and copper corrosion control treatment steps to small, medium, and large water systems;

(i) remains the same.

(j) 40 CFR 141.83, as modified by 72 Fed. Reg. 57,782 (Oct. 10, 2007), which sets forth lead and copper source water treatment requirements;

(k) 40 CFR 141.84, as modified by 72 Fed. Reg. 57,782 (Oct. 10, 2007), which sets forth lead service line replacement requirements;  
(l) through (w) remain the same.

AUTH: 75-6-103, MCA

IMP: 75-6-103, MCA

REASON: The proposed amendments to ARM 17.38.208(4)(e) conform the CFR references to renumbering within the federal rule and adopt new federal requirements.

The proposed amendments to ARM 17.38.208(4)(h), (j), and (k) adopt new or modified federal requirements for lead and copper. The statements of reasonable necessity for substantive new or modified federal requirements are consolidated at the end of this notice in the Reason for ARM 17.38.239.

17.38.209 GROUND WATER UNDER THE DIRECT INFLUENCE OF SURFACE WATER DETERMINATIONS (1) The board ~~hereby~~ adopts and incorporates by reference the Department of Environmental Quality Circular PWS-5, Ground Water Under the Direct Influence of Surface Water, ~~2002~~ 2008 edition, which sets forth the standards for making ground water under the direct influence of surface water determinations.

AUTH: 75-6-103, MCA

IMP: 75-6-103, MCA

REASON: The proposed amendment to ARM 17.38.209 adopts the newest edition of DEQ Circular PWS-5, which sets forth the standards for making ground water under the direct influence of surface water determinations. The proposed amendments to DEQ Circular PWS-5 are necessary to clarify those requirements so as to address comments received by the department from the regulated community. The proposed changes clarify that the preliminary assessment is only an assessment and not a final decision by the department, that the department may utilize any and all of the test methods to make a determination, and that the determination may be changed at any time given new information. The proposed changes to DEQ Circular PWS-5 may be viewed on the department web site at <http://www.deq.mt.gov/wqinfo/Circulars.asp>.

17.38.216 CHEMICAL AND RADIOLOGICAL QUALITY SAMPLES

(1) and (2) remain the same.

(3) The board adopts and incorporates by reference the following monitoring and analytical requirements:

(a) through (g) remain the same.

~~(h) 40 CFR 141.30, which sets forth sampling and analytical method requirements for total trihalomethanes;~~

(i) through (k) remain the same, but are renumbered (h) through (j).

~~(l)~~ (k) 40 CFR 141.80, as modified by 72 Fed. Reg. 57,782 (Oct. 10, 2007), which sets forth general requirements for the control of lead and copper;

- ~~(m)~~ (l) 40 CFR 141.86, as modified by 72 Fed. Reg. 57,782 (Oct. 10, 2007), which sets forth sampling and analytical method requirements for lead and copper;
- ~~(n)~~ (m) 40 CFR 141.87, as modified by 72 Fed. Reg. 57,782 (Oct. 10, 2007), which sets forth sampling requirements for water quality parameters;
- ~~(o)~~ (n) 40 CFR 141.88, as modified by 72 Fed. Reg. 57,782 (Oct. 10, 2007), which sets forth sampling requirements for lead and copper in source water;
- ~~(p)~~ (o) 40 CFR 141.89, as modified by 72 Fed. Reg. 57,782 (Oct. 10, 2007), which sets forth analytical method requirements for lead, copper, and water quality parameters;
- ~~(q)~~ (p) 40 CFR 141.130, which, ~~in addition to 40 CFR 141.30~~, sets forth general requirements for control of disinfectants and disinfection byproducts;
- ~~(r)~~ (q) 40 CFR 141.131, which, ~~in addition to 40 CFR 141.30~~, sets forth analytical method requirements for disinfectants and disinfection byproducts;
- ~~(s)~~ (r) 40 CFR 141.132, which, ~~in addition to 40 CFR 141.30~~, sets forth sampling requirements for disinfectants and disinfection byproducts; and
- ~~(t)~~ (s) 40 CFR 141.133, which, ~~in addition to 40 CFR 141.30~~, sets forth compliance requirements for disinfectants and disinfection byproducts.
- ~~(4) A public water supply system which exclusively purchases water from another public water supply system is considered an extension of the original public water supply system and is not required to perform chemical or radiological analyses to determine compliance with maximum contaminant levels unless specifically required by the department due to known or potential problems.~~
- (5) and (6) remain the same, but are renumbered (4) and (5).

AUTH: 75-6-103, MCA

IMP: 75-6-103, MCA

REASON: The proposed amendments to ARM 17.38.216 delete outdated references and adopt new federal language. The proposed amendment to (4) moves the requirements for consecutive systems to proposed New Rule I. The statements of reasonable necessity for substantive new or modified federal requirements are consolidated at the end of this notice in the Reason for ARM 17.38.239.

17.38.225 CONTROL TESTS (1) remains the same.

(2) At least two chlorine residual tests must be conducted daily, one at the ~~point of application~~ each entry point and one in the distribution system:

(a) by a supplier of a public water supply system employing full time chlorination of a groundwater source. The frequency of chlorine residual monitoring may be reduced by the department for noncommunity groundwater water systems on a case-by-case basis; and

(b) by a supplier of a public water supply system using a surface water source, who also shall comply with the other requirements in this subchapter for chlorine residual monitoring for surface water supplies; ~~and~~

(c) by a consecutive system that receives chlorinated water from its wholesaler. For consecutive systems, the entry point is the point at which the purchased water enters the distribution system of the consecutive system.

(3) remains the same.

(4) Only the following analytical methods or other methods approved by the department, may be used to demonstrate compliance with the requirements of this rule:

(a) Turbidity measurements must be taken as set forth in 40 CFR 141.74. Secondary turbidity standards may be used for daily calibration of turbidimeters if those standards are calibrated against an EPA-approved primary at least quarterly. Documentation of the date, analyst performing the procedure, procedures used, and results of the quarterly calibration checks must be maintained by the water system and reported to the department within ~~40~~ ten days following the end of the month during which this procedure took place.

(b) through (7) remain the same.

AUTH: 75-6-103, MCA

IMP: 75-6-103, MCA

REASON: The proposed addition of ARM 17.38.225(2)(c) clarifies that consecutive systems must maintain and monitor chlorine residuals when they, or their wholesaler, are required to chlorinate. The need for maintaining a residual is not diminished by the sale of water from a wholesaler to a consecutive system.

17.38.234 TESTING AND SAMPLING RECORDS AND REPORTING REQUIREMENTS (1) through (5) remain the same.

(6) The board adopts and incorporates by reference the following:

(a) and (b) remain the same.

(c) 40 CFR 141.35(a), ~~141.35(b) and 141.35(e)~~, which sets forth reporting requirements for unregulated chemicals;

(d) through (e) remain the same.

(f) 40 CFR 141.90 and 141.91, as modified by 72 Fed. Reg. 57,782 (Oct. 10, 2007), which sets forth reporting and recordkeeping requirements for lead and copper;

(g) through (9) remain the same.

AUTH: 75-6-103, MCA

IMP: 75-6-103, MCA

REASON: The proposed amendments to ARM 17.38.234 delete outdated references and adopt new federal language. The statements of reasonable necessity for substantive new or modified federal requirements are consolidated at the end of this notice in the Reason for ARM 17.38.239.

17.38.239 PUBLIC NOTIFICATION FOR COMMUNITY AND NONCOMMUNITY SUPPLIES (1) The board ~~hereby~~ adopts and incorporates by reference 40 CFR Part 141, subpart Q, which sets forth public notification requirements for drinking water violations.

(2) The board ~~hereby~~ adopts and incorporates by reference 40 CFR Part 141, Subpart O, which sets forth requirements for consumer confidence reports.

(3) The board adopts and incorporates by reference 40 CFR Part 141.85, as modified by 72 Fed. Reg. 57,782 (Oct. 10, 2007), which sets forth the public education and supplemental monitoring requirements for exceedances of the lead action level.

AUTH: 75-6-103, MCA

IMP: 75-6-103, MCA

REASON: The proposed amendment to ARM 17.38.239(3) is to adopt the lead education requirements into the public notice section of the ARM. The proposed amendment is necessary to clarify that the requirement is properly listed in the public notification section of the ARM.

### CFR INCORPORATION

As a primacy state, Montana is required to have laws and rules at least as stringent as the federal rules regulating public water supplies. Therefore, in 2000, the department changed its rules to adopt and incorporate by reference the public water supply requirements as defined in 40 CFR (1999 Edition), Part 141. Because the public water supply requirements are constantly changing and the department must be at least as stringent as the federal requirements in order to maintain primacy, the department modified its rules in 2002 to adopt the 2001 Edition and then in 2004 to adopt the 2003 Edition. In this proposed rule notice, the department is requesting that the board update the rules to adopt and incorporate by reference the 2007 Edition of the CFRs.

These proposed amendments are necessary to allow the department to enforce the public water supply laws and to retain primacy for enforcement of safe drinking water laws. The policy of the Montana Legislature has been for state agencies to retain primacy over environmental and public health programs.

The 2007 Edition of the CFR does not contain the Lead and Copper Rule Short-Term Revisions (LCRSTR). The LCRSTR were promulgated after publication of the 2007 Edition. Consequently, for Subpart I. Control of Lead and Copper, the department proposes to adopt the 2007 CFR as modified by 72 Fed. Reg. 57,782 (Oct. 10, 2007). The revisions are necessary to clarify monitoring requirements, waiver requirements, and increase public notification.

Although the department is not currently proposing to adopt the new federal Long-Term 2 Surface Water Rule (LT2), Stage 2 Disinfectant/Disinfection-by-Products Rule (Stage 2), or the Ground Water Rule (GWR), some portions of those requirements are being adopted by reference as part of other sections that the department needs to adopt to implement its current program. It is impractical to avoid incorporation of portions of the new requirements, because they are so closely codified with provisions that the department needs to implement. Because the department does not yet have primacy to implement the new federal requirements, incorporation of portions of the new federal provisions will not have a substantive effect.

Following is a summary of the significant changes between the 2003 and 2007 editions of the CFR:



Subpart A. General

§ 141.2. Definitions. Sixteen new or modified terms were added to this section.

Subpart B. Maximum Contaminant Levels (MCL)

§ 141.12. Maximum contaminant levels for total trihalomethanes. This section has been deleted and moved to §141.64.

Subpart C. Monitoring and Analytical Requirements

§ 141.23. Inorganic chemical sampling and analytical requirements. New requirements add new source or system timeframes, provide clarification for failure to collect all quarterly samples, add arsenic and asbestos to the Running Annual Average (RAA), and clarify RAA calculations for failure to collect required confirmation samples.

§ 141.24. Organic chemicals sampling and analytical requirements. This section clarifies that the MCL determinations are based on quarters, adopts new source/system requirements, and clarifies monitoring requirements and the detection and acceptance tables.

§ 141.26. Monitoring frequency and compliance requirements for radionuclides in community water systems. This section clarifies provisions for reduced monitoring.

Subpart D. Reporting and Recordkeeping

§ 141.33. Record maintenance. This section provides clarification and new requirements for maintaining monitoring plans.

§ 141.35. Reporting for unregulated contaminant monitoring results. This section clarifies reporting requirements.

Subpart E. Special Regulations, Including Monitoring Regulations and Prohibition on Lead Use

§ 141.40. Monitoring requirements for unregulated contaminants. This section clarifies unregulated contaminant monitoring requirements, applicability provisions, and a table.

Subpart I. Control of Lead and Copper, as modified by 72 Fed. Reg. 57,782 (Oct. 10, 2007)

§ 141.80. General requirements. This section clarifies the "90th percentile" calculation for systems collecting fewer than five samples and requires that notification of lead results be given to the sample sites.

§ 141.81. Applicability of corrosion control treatment steps to small, medium-size, and large water systems. This section requires state approval before any long-term treatment change or new source is added to a system and clarifies the begin date for required actions.

§ 141.83. Source water treatment requirements. This section provides clarification of begin dates and time frames for required actions.

§ 141.84. Lead service line replacement requirements. This section provides clarification of begin dates and time-frames for required actions.

§ 141.85. Public education and supplemental monitoring requirements. This section clarifies the public education requirements.

§ 141.86. Monitoring requirements for lead and copper in tap water. This section allows for fewer than five samples, clarifies the sampling table, clarifies when

a system must begin reduced monitoring and the minimum number of samples, clarifies timing and reduction for optimized water quality parameters (WQP) with written state approval, clarifies the timing and requirements for reducing to one sample every three years (sample every third calendar year), clarifies alternate schedules and timing, clarifies the timing and requirements for loss of reduced monitoring, requires the system to notify the state, in writing, of any long-term change in treatment or installation of a new source, requires the state to review and preapprove changes, requires waivers to be renewed every ninth calendar year, and clarifies provisions regarding review of new sources or changes in treatment for systems with a waiver.

§ 141.87. Monitoring requirements for water quality parameters. This section clarifies a table, clarifies requirements and timing for increased collection of WQPs following exceedance, clarifies timing for reduced WQPs for optimized systems, and clarifies that systems on reduced three-year monitoring must collect and submit a sample once every three calendar years.

§ 141.88. Monitoring requirements for lead and copper in source water. This section clarifies the timing for source Pb and Cu samples after exceedance and clarifies provisions requiring one sample every third calendar year.

§ 141.90. Reporting requirements. This section clarifies timing, requires prior state review and approval of new long-term treatment or a new source, clarifies provisions regarding submission to the state of written documentation for the lead service line material evaluation, and requires systems to submit certification of lead-result consumer notification and timing.

#### Subpart L. Disinfectant Residuals, Disinfection Byproducts, and Disinfection Byproduct Precursors

§ 141.131. Analytical requirements. This section clarifies methods, a table, acceptance limits, and maximum residual levels.

§ 141.132. Monitoring requirements. This section clarifies timelines and requirements for reduced monitoring.

#### Subpart O. Consumer Confidence Reports

§ 141.153. Content of the reports. This section clarifies reporting levels for RAAs and disinfection byproducts (DBPs), clarifies average and range reporting, and clarifies a new reporting requirement for the Ground Water Rule (GWR), which is currently not adopted.

§ 141.154. Required additional health information. This section clarifies when lead education must be given and clarifies its content.

#### Subpart Q. Public Notification of Drinking Water Violations

§ 141.202. Tier 1 Public notice - Form, manner, and frequency of notice. This section provides new requirements for GWR, which is currently not adopted.

§ 141.203. Tier 2 Public notice - Form, manner, and frequency of notice. This section provides new requirements for GWR, which is currently not adopted.

Appendix A. National primary drinking water regulations - Violations and other situations requiring public notice. Appendix A provides new requirements for Long-term 2, which is currently not adopted, new requirements for GWR, which is currently not adopted, adds a uranium requirement, and clarifies provisions regarding DBPs.

Appendix B. Standard health effects language for public notification.

Appendix B adds GWR language, which is currently not adopted, and adds uranium language.

4. The proposed new rule provides as follows:

NEW RULE I CONSECUTIVE SYSTEM COVERAGE (1) As provided in this rule, a consecutive system that meets all of the conditions in (1)(a) through (e) may be excluded from the requirements of the National Primary Drinking Water Regulations, as described in 40 CFR Part 141. A consecutive system that is granted an exclusion under this rule is not excluded from any requirements, additional to those in 40 CFR Part 141, which are applicable to the system under Title 75, chapter 6, MCA, or rules adopted thereunder. In order to be considered for the exclusion, a consecutive system must:

- (a) consist only of distribution and storage facilities and not have any collection or treatment facilities;
- (b) obtain all of its water from, but not be owned or operated by, a public water system to which the regulations of Part 141 apply;
- (c) not sell water to any person;
- (d) not be a carrier that conveys passengers in interstate commerce;
- (e) document that the wholesale water system from which it obtains all of its water will:
  - (i) include the consecutive system in its sampling plans;
  - (ii) be responsible for issuing public notice; and
  - (iii) be responsible for issuing consumer confidence reports for the consecutive system.

(2) To obtain an exclusion from the requirements of Part 141, a consecutive system must apply to the department. The request must be in writing and must document the system's conformance with the requirements of (1)(a) through (e). The request must be accompanied by a signed copy of the written agreement between the wholesale and consecutive systems. The agreement must implement the requirements of (1)(e).

(3) Based on a consideration of potential impacts to public health, the department may grant, partially grant, or deny a request for exclusion, and may revoke or modify any exclusion after it is granted.

(4) Unless otherwise required by the department, consecutive systems are not required to duplicate their wholesaler's entry-point sampling.

AUTH: 75-6-103, MCA

IMP: 75-6-103, MCA

REASON: Proposed New Rule I clarifies the requirements applicable to consecutive systems. The new rule adopts federal language from 40 CFR 141.3 that excludes certain public water supply systems from the requirements of 40 CFR Part 141. The new rule modifies the federal rule by setting out a procedure for applying for an exclusion, and by requiring the applicant to demonstrate that the wholesale supplier will remain responsible for sampling, public notice, and consumer confidence reports. The new rule is necessary to implement federal provisions

regarding consecutive systems, and to ensure that the users of the consecutive systems are as protected as are users of the wholesale system.

5. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana, 59620-0901; faxed to (406) 444-4386; or e-mailed to [ejohnson@mt.gov](mailto:ejohnson@mt.gov), no later than 5:00 p.m., September 25, 2008. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

6. Katherine Orr, attorney for the board, or another attorney for the Agency Legal Services Bureau, has been designated to preside over and conduct the hearing.

7. The Board of Environmental Review and the Department of Environmental Quality maintain a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; e-mailed to [ejohnson@mt.gov](mailto:ejohnson@mt.gov); or may be made by completing a request form at any rules hearing held by the Board of Environmental Review or the Department of Environmental Quality.

8. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

/s/ James M. Madden  
JAMES M. MADDEN  
Rule Reviewer

BY: /s/ Joseph W. Russell  
JOSEPH W. RUSSELL, M.P.H.  
Chairman

Certified to the Secretary of State August 18, 2008.